

**PRELIMINARY REPORT AND  
RECOMMENDATIONS  
of the  
DELAY REDUCTION WORK GROUP**

March 1, 2002

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## **EXECUTIVE SUMMARY**

- **Statement of the Problem:** The Michigan Court of Appeals faces a serious problem with one category of the cases that litigants file with the Court: cases that the Court decides by *opinion* rather than by *order*. The Court disposed of approximately 7,600 cases in 2001. The Court disposed of approximately 3,100 cases by *opinion* and on average it disposed of those opinion cases within 654 days from the date of filing. Further, the Court disposed of only 14.5% of its opinion cases within 12 months of filing and 24.8% of its opinion cases within 18 months of filing. These figures are *not* within acceptable limits.
- **The Importance of Delay Reduction** Delay reduction is important for a number of reasons:
  - If delay is reduced, this counters the public's perception that high costs and excessive delays hinder access to the courts, result in unfair advantages to certain litigants, and interfere with the equal distribution of justice.
  - "From the injured person forced to wait years for compensation to the executive unable to finalize a business transaction, the impact of delay is acutely felt as bills mount, commercial and personal opportunities diminish and future plans are placed on hold. A child awaiting adoption, an accused awaiting trial, and a crime victim and her family experience all too concretely the anxiety produced by the prolonged uncertainty of the outcome of litigation."
  - Lengthy delays on appeal may decrease the chance that funds will be available to cover damage awards.
  - The cost of business transactions goes up while the predictability of business decisions declines.
  - Delay places additional strain on family relationships as marriage dissolution, custody and adoption decisions are reviewed and possibly revised.
  - If there is a remand, delay increases the potential that witnesses will not be available to testify and evidence will be lost.
  - Delay leading to unresolved legal issues leaves the litigants, the lower courts, and the public without adequate guidance. (See Novak and Somerlot, *infra*).
- **Declining Volume and Delay** The Court is faced with two inconsistent phenomena: a decline in case filings over time and the continued existence of delay.
  - From 1992 through 2001 filings with the Court decreased by approximately 47%, from 13,352 to 7,102. Filings per Judge decreased approximately 54%, from 556 to 254, and dispositions per Judge decreased by approximately 44%, from 486 to 271. In part, this decline resulted from the constitutional amendment that abolished appeals of right following guilty pleas; in part it resulted from the effects of tort reform; in part it resulted from a strong economy; and in part it may signal at least the beginnings of a change in society's attitudes toward litigation.



- However, in 2001, the average time to disposition for the vast majority of opinion cases was 654 days from case filing. On average, the overwhelming numbers of days for 2001 opinion cases were in the major processing stages of Intake and Warehouse, a cumulative 529 days out of the total of 654 days. On average, an opinion case spent 61 days in Research and 64 days in the Judicial Chambers.
- **Reducing Delay in the Judicial Chambers** Although delay in the Judicial Chambers is minimal, the Court should nevertheless take action immediately to reduce that delay. Based on 2001 statistics, the following actions will reduce the average wait in the Judicial Chambers from the current level of 64 days to 49 days. This is a reduction of approximately 23%.
  - *Decide 100% of Custody/TPR opinion cases within 42 days of submission to the panel.*
  - *Decide 100% of the remaining Expedited opinion cases (exclusive of Custody/TPR opinion cases) within 49 days of submission to the panel.*
  - *Decide 100% of the Summary Panel opinion cases within 42 days of submission to the panel.*
  - *Decide 100% of the Regular/Complex Panel opinion cases within 105 days of submission to the panel.*
- **Reducing Delay in the Warehouse** The Court should take action immediately to reduce delay in the “Warehouse.” Based on 2001 statistics, the following actions will reduce the average wait in the Warehouse from the current level of 266 days to 212 days. This is a reduction of approximately 20%.
  - *Couple summary case call panels with complex case call panels.*
  - *Add additional volunteer summary panels.*
  - *Increase the aggregate case day evaluations for complex case call panels.*
  - *Continue to assign one summary disposition appeal to each Judge on each regular case call panel without a research report or a draft opinion.*
  - *Assign one criminal appeal to each Judge on each regular case call panel without a research report or draft opinion.*
  - *Prepare only draft opinions, and not reports, in certain criminal appeals.*
- **Reducing Delay at Intake** The Court should take action, to become effective September 1, 2003, to reduce delay at Intake if the above actions are successful. Based on 2001 statistics, the following actions will reduce the average wait at Intake from the current level of 263 days to 176 days. This is a reduction of approximately 33%.
  - *Amend MCR 7.204 to reduce the time for filing a docketing statement in civil cases to 14 days.*
  - *Amend MCR 7.210(B)(3)(b)(iv) to reduce the time for filing transcripts in summary disposition appeals from 91 days to 42 days.*
  - *Amend MCR 7.212(A)(1)(a)(iii) to delete all stipulations to extend the time to file an appellant’s brief.*

- Amend MCR 7.212(A)(2)(a)(iv) to delete all stipulations to extend the time to file an appellee's brief.
- Amend MCR 7.212(A)(1)(a)(iii) and MCR 7.212(A)(2)(a)(iii) to provide that motions to extend the time for filing briefs may be granted only on good cause shown and then only for a maximum of 14 days.
- Amend MCR 7.212(A)(1)(a)(iii) to reduce the time for filing an appellant's brief to 42 days.
- Amend MCR 7.210(G) to reduce the time to file the lower court record with the Court of Appeals to 14 days.
- Amend MCR 7.212(G) to reduce the time to file any reply brief to 14 days.

- **Conclusions**

- Based on 2001 statistics, the above actions will reduce the wait at the Court of Appeals on an overall basis from the current level, on average, of 654 days to an average of 498 days. This is an overall reduction of approximately 23%.
- The current standard of the American Bar Association is that appellate courts should dispose of 95% of the cases filed with them within 12 months of filing. The ABA standards do not distinguish between *opinion* cases and *order* cases; they simply refer to *all* cases in the aggregate.
- If the Court were to bring the *average* time for processing an *opinion* case down to roughly 300 days, then the Court would dispose of 95% of its *opinion* cases well within 18 months of filing, but not within 12 months of filing.
- Assuming the disposition of approximately 7600 cases per year (with 60% disposed of by order and 40% disposed of by opinion), the Court could not, as a practical matter, dispose of *all* its cases within 12 months of filing. However, with additional resources, the Court could reduce the projected overall average processing time for opinion cases from 498 days to 300 days, a reduction of approximately 198 days. Doing so would require an additional seven to ten attorneys in the Research Division.
- Therefore, the Court should seek funding in FY 2004 for an additional seven to ten attorneys in the Research Division, at an estimated cost of \$470,000 to \$670,000. Assuming such an appropriation increase effective October 1, 2003, the Court would then begin to dispose of 95% of *all* cases within 18 months of filing.

## I. INTRODUCTION

### A. Statement of the Problem

The Michigan Court of Appeals faces a serious problem with the disposition of one category of cases that litigants file with the Court: cases that the Court decides by *opinion* rather than by *order*. The Court disposed of approximately 7,600 cases in 2001. Of these, the Court disposed of approximately 4,500 cases by *order* and on average it disposed of these order cases within 130 days from the date of filing. This figure is within acceptable limits. By contrast, the Court disposed of approximately 3,100 cases by *opinion* and on average it disposed of those opinion cases within 654 days from the date of filing. Further, the Court disposed of only 14.5% of its opinion cases within 12 months of filing and 24.8% of its opinion cases within 18 months of filing. These figures are *not* within acceptable limits.

### B. Overview

The Michigan Court of Appeals is Michigan's intermediate appellate court. The Court is a product of the 1963 Michigan Constitution and of the legislation passed to implement the provisions of that Constitution. The Court commenced its operations in January of 1965. Since that time, the Court has heard and decided in excess of 200,000 civil and criminal cases, the Legislature has expanded its membership four times to the current level of 28 judges, the 67 judges who have served on the Court have written 247 volumes of the Michigan Appeals Reports, and the Court has been recognized as one of the premier courts of intermediate appellate jurisdiction in the country.

Almost from its inception, the Court has been a volume operation and there has been an unending focus on the timely resolution of the matters that come before it. As part of its delay reduction efforts in the 1990s, the Court set certain goals for itself, both with respect to its *clearance rate* and its *case age percentage*.

The Court defines *clearance rate* as the ratio of total dispositions to new cases filed during a given time period. For example, if litigants filed 300 new cases with the Court within a given month and the Court disposed of 250 cases from its inventory within that same month, the Court's clearance rate would be 83.33% for that month and its inventory would increase by 50 cases.

The Court defines *case age percentage* as the percentage of pending cases that are 18 months of age or less from the date of filing with the Court. For example, a case that is filed in any form (claim of appeal; application for leave; or original action, etc.) on January 1, 2002, is 18 months old on June 1, 2003. At the close of each month, the Court calculates the age of each pending case and reports those ages. Case age percentages are not a precise indicator of case processing rates for delay reduction purposes. Nevertheless, such percentages give a rough estimate of the trend in dispositions.

It is important to distinguish between *case age percentage* and *disposition rates*.<sup>1</sup> The former measures the age of cases in the Court's inventory. The latter measures the time which it takes the Court to decide its cases. For example, if the Court disposes of 7000 cases in a year, and 6650 of those cases were disposed of within 18 months of their initial filing dates, the Court's *disposition rate* for delay reduction purposes would be 95% in 18 months (6650/7000 = .95).

The Court has usually maintained its *clearance rate* at over 100%. Nonetheless, its *case age percentage* as of December 31, 2001, was that only 83.73% of its cases were 18 months or less in age from initial filing. Further, the Court's *disposition rate* for 2001 was that 68.34% of the cases decided by opinion *and* order in 2001 were disposed within 18 months of filing. Whether viewed from the perspective either of *case age percentages* or *disposition rates*, therefore, it is clear that delay exists at the Court and that the Court must act to reduce this delay.

### **C. Why Delay Reduction Is Important**

Novak and Somerlot<sup>2</sup> provide the following excellent summary of why policy-makers should be concerned with the problem of delay on appeal:

A long-standing criticism of American courts is that litigation takes too long and costs too much. Recent studies document the public's perception that high costs and excessive delays hinder access to the courts, result in unfair advantages to certain litigants, and interfere with the equal distribution of justice. This perception is not illusory. Congestion in our courts causes palpable injury to litigants, the public, and the justice system itself.

From the injured person forced to wait years for compensation to the executive unable to finalize a business transaction, the impact of delay is acutely felt as bills mount, commercial and personal opportunities diminish, and future plans are placed on hold. A child awaiting adoption, an accused awaiting trial, and a crime victim and her family experience all too concretely the anxiety produced by the prolonged uncertainty of the outcome of litigation. Moreover, the fact-finding process suffers because the potential for error multiplies as the time between the original event and the judicial determination grows.

Delay on appeal exacerbates these injuries. Long periods between judgment and disposition on appeal increase the chances that funds will become insufficient to cover the full amount of damage awards. The cost of business transactions goes up, while the predictability of business decisions declines. Additional strain is placed on family relationships as marriage dissolution, custody, and adoption decisions are reviewed and possibly revised. When further lower court proceedings are necessary, appellate delay adds to the potential that witnesses will not testify further and evidence will be lost. Unresolved legal

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<sup>1</sup> The National Center for State Courts uses the term *case processing time* to describe this concept.

<sup>2</sup> R. Novak and D. Somerlot, *Delay on appeal: a process for identifying causes and cures* (1990).

issues and important questions of public policy leave litigants, lower courts, and all citizens without adequate guidance.

Besides interfering with justice-serving functions, delay also opens the courts to criticism of their administrative competence. Continued congestion and unattended delay magnify the perception that the court is poorly managed. They fuel the attitude that public resources are not used efficiently and thus weaken claims that additional resources should be channeled into court systems. Consequently, when the appeal process is excessively prolonged, delay indicates the need for organizational improvements.

#### **D. The Delay Reduction Work Group**

It was against this background that the Court of Appeals recently initiated an intensive delay analysis and reduction effort. In December of 2001, then-Chief Judge Bandstra and Chief Judge-designate Whitbeck created a Delay Reduction Work Group. The Work Group consists of Judges Smolenski, Zahra, Gage and Whitbeck as well as Chief Clerk Sandra Mengel, Research Director Larry Royster, Commissioner Nelson Leavitt and Mary Lu Hickner of the Clerk's Office. This Work Group has met weekly since December 17, 2001, to analyze the Court's current situation and to consider proposals for improvement. This Preliminary Report and Recommendation contains the Work Group's initial findings and proposals.

## **II. OVERVIEW: THE COURT OF APPEALS AS A VOLUME COURT**

### **A. Key Definitions**

1. A *case* is a matter filed with the Court that will usually be resolved through a dispositive opinion or order. There are, in broad terms, two types of cases.
  - a. *Opinion cases* are those that the Court disposes of through the issuance of an opinion.<sup>3</sup> These include cases appealed as of right, see MCR 7.204; cases for which applications for leave to appeal are granted, see MCR 7.205(D)(3); cases filed as original actions, see MCR 7.206; remands from the Supreme Court; and remands from the Supreme Court as if on leave granted.
  - b. *Order cases* are those that the Court disposes of through the issuance of an order.<sup>4</sup> These include cases in which the Court denies an application for leave to appeal or a delayed application for leave to appeal, see MCR 7.205(D)(2); cases in which

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<sup>3</sup> The Court can issue several types of opinions. A *memorandum opinion* is an opinion of two or less pages that disposes of the case in a very succinct fashion. Such memorandum opinions are always unanimous, always unpublished, and are not attributed as to the authoring Judge. A *per curiam opinion* is an opinion of the Court. Such opinions may be unanimous or a majority opinion with a dissent or a concurrence, may or may not be published, and are not attributed as to the authoring Judge. An *authored opinion* may be a unanimous opinion or a majority opinion with a dissent or a concurrence, is always published, and is always attributed to the authoring Judge. Only published opinions have the force of precedent. See MCR 7.215(A)(1).

<sup>4</sup> An order is a brief statement by the Court granting or denying a particular request by a litigant. The Court issues a variety of orders, of which the vast majority do not dispose of the case in question. Such orders are non-dispositive orders.

the Court denies an application for delayed cross appeal, see MCR 7.207(E); cases in which the Court grants a motion for dismissal, summary affirmance, or peremptory reversal, see MCR 7.211(C)(2), (3), (4); original actions, see MCR 7.206; and miscellaneous matters.

2. *Delay* is a *measure of time* and refers to a comparison between actual processing times and processing times that are required either by rule or court policy. Case processing from beginning to end is tracked, as well as within stages such as transcript production, briefing, record compilation, and staff review. If the actual processing times overall or at each stage exceed the required times, delay exists. For instance, ABA Standards on Appellate Delay Reduction propose that 95% of an appellate court's cases should be disposed within 365 days of filing.
3. A *goal* is a non-time specific statement setting out a result or outcome that the Court wishes to achieve. For example, a simple goal might be that the Court should substantially reduce the delay in the Court's "Warehouse."<sup>5</sup>
4. An *objective* is a time-specific statement setting out the time by which a goal is to be achieved. For example, a simple objective might be that the Court will by September 30, 2004, decide 95% of all cases within 365 days from the date of filing. Rather clearly, the achievement of a time-specific objective relating to delay reduction requires that each step of each specific delay reduction technique be clearly identified. Equally as clearly, as each such step is identified, the Court must also address the following questions:
  - a. Who specifically will be responsible for doing this?
  - b. What specifically will they do?
  - c. How specifically will it be done?
  - d. What specifically in the way of resources will be needed to do it?
  - e. What training, if any, will the system participants need?

## **B. Organization Of The Court Of Appeals**

1. *Overview* The Court of Appeals has facilities in four statutorily defined districts across the state. See MCL 600.302. Twenty-eight judges sit on the Court, with seven coming from each of the four districts. A total of 250 employees (Judges and staff) work in six locations throughout the four districts, linked by a state-wide computer network that is supported by the Court's in-house Information Systems Department. On any given day, close to 1,000 docket entries are made by Court employees on the computer system. At the same time, mail staff in the four district offices process

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<sup>5</sup> As noted below, the Court's "Warehouse" contains cases in which the transcripts have been produced, appellant's brief has been filed, appellee's brief has been filed or the time for filing it has elapsed, and the record has been transmitted by the trial court. When a case is waiting in the Warehouse, absolutely nothing is happening to it; it is simply waiting because there are not enough attorneys in the Research Division to accommodate additional cases.

approximately 300 newly filed documents for movement between offices or for docketing in the local office. See Appendix I: Michigan Court of Appeals Organization Chart.

## 2. *Research Division*

- a. Overview The Court's ability to manage its heavy caseload is attributable in large part to its effective use of the Research Division. The division is comprised of five major subdivisions that employ approximately 75 attorneys:

- (1) **Prehearing:** 30-35 attorneys, 3 supervisors
- (2) **Senior Research:** 20 attorneys, 1 supervisor
- (3) **Commissioners:** 13 attorneys
- (4) **Settlement Office:** 1 attorney
- (5) **Support Services:** 3 attorneys
- (6) **Contract Attorneys:** 11 attorneys (compensated on a per-report basis)

- b. Prehearing Section Prehearing Section attorneys are typically recent law school graduates who are hired for a period of one to three years. They prepare research reports in cases that are in the mid-range of difficulty. The reports are confidential intra-Court documents that contain a comprehensive and neutral presentation of the material facts, a recitation of the issues raised by the parties, a summary of the parties' arguments, a thorough analysis of the law and facts on each issue, and a recommendation as to the appropriate disposition. The Prehearing Section has offices in Detroit, Lansing and Grand Rapids.

- c. Senior Research Senior Research attorneys are experienced attorneys whose backgrounds typically include Prehearing, judicial clerkships and private practice. Their primary function is to prepare research reports in complex cases for case call. The main office for Senior Research is located in Detroit, although the Lansing and Grand Rapids offices also house several senior research attorneys each.

- d. Commissioners The commissioners are experienced attorneys whose functions include reviewing new case files to determine compliance with the court rules and internal operating procedures, handling emergency motions, and preparing written reports in discretionary matters, such as applications for review when no appeal as of right exists (e.g., discretionary, interlocutory or late appeals; appeals from certain administrative tribunals), motions to withdraw as counsel and complaints for writs of habeas corpus, superintending control and mandamus. A commissioner report includes a statement of the pertinent facts and issues, a discussion of the law, and a proposed order reflecting the recommended

disposition of the case. Commissioners assigned to each of the four district offices review incoming emergency and discretionary matters and work closely with the judges to resolve priority matters in an expedited manner.

- e. Settlement Office The Settlement Office is located in Detroit. Cases selected for the program are scheduled for confidential conferences at which the attorneys and parties meet with the settlement attorney to discuss the possibility of settling the appeals. The facilitation method is used, with the settlement attorney serving as the facilitator.<sup>6</sup>
  - f. Support Services Support Services is comprised of three attorneys, all of whom are based in Lansing: the Michigan Appellate Digest editor, the librarian, and the case screener. The Digest editor prepares annotations of the legal holdings of all published opinions of the Michigan Supreme Court and the Court of Appeals. In addition, the Digest editor prepares several other legal research tools that the Court staff uses. The librarian maintains and monitors the Court's several libraries and provides training in traditional and computerized legal research services. The case screener is an experienced staff attorney who evaluates most cases to determine the number of working days it should take an average prehearing attorney to prepare reports in the cases. The day evaluations are determined by the type of case, the size of the lower court record, the number of issues, and the complexity of the issues.
  - g. Contract Attorneys Since late 2000, the Court has utilized contract attorneys to prepare reports in termination of parental rights (TPR) appeals. These attorneys are all former staff attorneys who are no longer otherwise engaged in the practice of law. The use of contract attorneys has proven to be an efficient and cost-effective method of dealing with the large number of TPR appeals filed during the past two or three years. Presently, there are eleven contract attorneys who work out of their homes on a part-time basis.
  - h. Staffing Levels Staffing levels authorized and filled as of March 1, 2002:  
  
84.5 Authorized; 86.5 Filled<sup>7</sup>.
3. *Clerk's Office*
- a. Responsibilities There are four district offices of the Clerk (Lansing, Grand Rapids, Southfield and Detroit), and a Central office in Lansing. The Clerk's Offices accept and review all filings, and maintain a comprehensive computer docket of appeals pending before the Court. Staff attorneys confirm this Court's jurisdiction in each appeal and prepare legal memoranda to accompany substantive motions that are submitted to the Judges. Clerk's staff handle public inquiries on pending appeals, procure the records from the trial courts, schedule

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<sup>6</sup> Called a "moderator" under the court rule, MCR 7.213[A].

<sup>7</sup> This represents a snapshot in time, not the situation on average throughout the year.



all cases for formal submission to panels of Judges, and supervise the release of all orders and opinions.

- b. Staffing Levels Staffing levels authorized and filled as of March 1, 2002:

52 Authorized; 51 Filled. See fn 7.

#### 4. *Administrative Office*

- a. Responsibilities Located in Lansing, this office is responsible for accounting, benefits, budgeting, expenditures, facilities, human resources, internal controls, meetings, payroll, personnel, purchasing, travel, and visiting Judges.

- b. Staffing Levels Staffing levels authorized and filled as of March 1, 2002:

5 Authorized; 5 Filled. See fn 7.

#### 5. *Court Security*

- a. Responsibilities The Court has eight facilities in six locations across the state which include four courtrooms. The Security staff provides a variety of security and service-related functions to safeguard Judges, staff, citizens, and property of the Court. The Security Division establishes and maintains a safe and secure work environment at all Court facilities by promoting and implementing a variety of security measures. These security measures include, among others, risk management, property protection, incident control and management reporting, courtroom monitoring, and security hardware operation.

- b. Staffing Levels Staffing levels authorized and filled as of March 1, 2002:

10 Authorized; 8 Filled. See fn 7.

#### 6. *Information Systems*

- a. Responsibilities The Information Systems office is responsible for supporting the automated docketing and tracking of the Court's caseload, provision of word processing capabilities, management of the Court-wide e-mail system, development of standardized templates for increased efficiencies in producing Court documents, training all employees in every aspect of computer use, and all related computerized functions including the electronic archive and digest of all Court opinions on the Court's web site. The office's work is focused on the continuing refinement of the docketing system to support more efficient use by Court staff, on developing increasingly sophisticated case management tools, and on collaborating with other judicial agencies in the goal of enhancing web-based access to information about the Court and its caseload. Document imaging and e-filing will ultimately produce electronic representations of case filings that can be more efficiently indexed, archived, and shared among the Court's various offices for purposes of processing and review.

A particular focus of the Information Systems office is the in-house case management system titled Michigan Appellate Information System, or Mappis. A combination of database and web servers, Mappis was conceived in 1994 and geared specifically towards the ultimate goal of developing a browser-based Court-wide appellate information system. Five years later, Mappis was unveiled on July 5, 1999. Now, local Mappis servers are installed in Southfield, Lansing, Detroit and Grand Rapids. The servers at each of these locations are running real-time replication which synchronizes the servers every five seconds. This allows for faster processing and also acts as a backup in the event of a server failure.

Mappis was modeled on the same processes and procedures that had been supported by the mainframe for the preceding two decades. Mappis also automates functions such as case call formation that cannot be fully automated on the mainframe. Its full-text menus contain options matched to each user group's specific data needs (Judicial Offices, Research Division, Clerk's Office, Administrative Office, Security Division, State Court Administrative Office, and Supreme Court). It provides staff with links to prominent Internet sites for legal research. It stores and provides access to necessary Court documents such as the Internal Operating Procedures and a variety of research tools utilized by staff attorneys and judges alike. And, as needs evolve, Mappis can be quickly reprogrammed, virtually "on the fly," to meet user expectations.

- b. Staffing Levels Staffing levels authorized and filled as of March 1, 2002:

12 Authorized; 12 Filled. See fn 7.

## 7. *Judicial Chambers.*

- a. Judges Judges sit monthly in panels of three to decide cases on the calendar call. They rotate state-wide among panels, so that over a period of time each Judge sits with every other Judge with equal frequency. See MCR 7.201(D). In addition, three-Judge panels from each district sit weekly on motion docket panels to decide pending motions and leave applications. The composition of the panels changes on a monthly basis. Finally, judges sit on special motion docket panels to review court reporter and attorney failures to comply with prior court orders concerning the production of transcripts or the assessment of costs.

- b. Law Clerks

- (1) Each Judge utilizes a law clerk. The duties of a law clerk vary according to the needs of the individual Judge. A law clerk's duties might include conducting additional legal research, preparing bench memos in cases assigned to case call without research reports, drafting proposed opinions, or reviewing matters on the motion docket.

- (2) Staffing levels authorized and filled as of March 1, 2002:

28 Authorized; 28 Filled. See fn 7.

c. Judicial Secretaries

(1) Each Judge of the Court also employs a judicial secretary. As with the law clerks, the specific duties of the judicial secretaries vary with the individual Judges. Generally, the secretaries' responsibilities include: opening and maintaining the Judges' files on case call and motion docket matters, circulating opinions and orders, tracking votes, submitting opinions and orders to the Clerk's Office for release, and performing clerical duties such as typing, filing, scheduling appointments and answering telephones.

(2) Staffing levels authorized and filled as of March 1, 2002:

29 Authorized; 29 Filled. See fn 7.

**C. Motion Docket**

1. *Panels* Motion docket panels of Judges review applications for leave under MCR 7.205, original actions under MCR 7.206, and all motions filed under MCR 7.211.
2. *Assignments* Judges sit on motion docket panels on a monthly rotation. Annually, each Judge may participate in a month-long motion docket approximately six times. Additionally, Judges hear motions on the cases that are assigned to them for case call, motions for rehearing, and emergency matters that must be submitted outside the standard rotation. In the aggregate (regular motion docket, special motion docket, motion docket affecting case call, and rehearing docket), the Clerk's Office submits slightly more than 100 matters per week to various three-Judge panels. The Judges review and decide these matters in addition to their responsibilities on the case call. The Clerk's Office submits an additional 80-some administrative matters each week to the Chief Judge or a designee Judge.
3. *Non-dispositive matters submitted to three-Judge panels* These include motions to remand, motions to substitute counsel, motions to adjourn, motions for bond, motions to intervene, motions for oral argument after case call has been scheduled, motions for stay, and motions to withdraw as counsel. Orders that are entered in these matters are not included within the count of dispositions entered by the Court each year and this Report does not further deal with such non-dispositive matters.
4. *Dispositive matters submitted to three-Judge panels* If an application or original action is denied, or if dispositive relief is granted, an order will be entered that will dispose of the file and remove it from the Court's docket of pending cases. Such matters include:
  - a. Denial Of Leave Or Granting Of Peremptory Relief On Review Of An Application For Leave To Appeal MCR 7.205(D)(2).
  - b. Denial Of Relief Or Granting Of Peremptory Relief On Review Of An Original Action MCR 7.206.

- c. Motion To Dismiss – may be filed any time before a case is placed on a case call. MCR 7.211(C)(2).
  - d. Motion To Affirm – may be filed after the appellant’s brief has been filed. MCR 7.211(C)(3).
  - e. Motion For Peremptory Reversal – may be filed at any time in the appeal. MCR 7.211(C)(4).
  - f. Motion To Withdraw – may be filed if the attorney for a criminal defendant-appellant determines that the appeal is wholly frivolous. If the motion is granted, the appeal is dismissed. MCR 7.211(C)(5).
  - g. Confession Of Error By Prosecutor – may be filed if the prosecutor concurs in the relief requested by defendant-appellant in a criminal appeal. If the Court agrees, an order may be entered granting the relief requested. MCR 7.211(C)(7).
5. *Dispositive Matters Submitted to the Chief Judge or His Designee* Cases may also be removed from the pending caseload without submission on a three-Judge motion docket:
- a. Involuntary Dismissal For Want Of Prosecution Or Failure To Comply With The Court Rules. MCR 7.201(B)(3) or MCR 7.217. These are submitted to the Chief Judge on the administrative motion docket under MCR 7.211(E)(2).
  - b. Involuntary Dismissal For Lack Of Jurisdiction. MCR 7.203(F). These are submitted to the Chief Judge on the administrative motion docket under MCR 7.211(E)(2).
6. *Dispositive Order Directed by Chief Clerk* The court rules provide one limited area in which the Clerk’s Office is authorized to issue orders of dismissal.
- a. Voluntary Dismissal By Stipulation Of The Parties Or Unopposed Motion To Withdraw The Appeal MCR 7.218. Upon the filing of either of these pleadings, a Clerk’s order of dismissal will be entered without submission to either the Chief Judge or to a three-Judge motion docket panel, under the authority of MCR 7.218. Cases that are settled through the intervention of the Settlement Office are included in this category.
  - b. Class Actions And Case Call A three-Judge order is required for approval of stipulations to dismiss in “class actions or cases submitted on a session calendar (case call).” MCR 7.218(B).

#### **D. Processing an Opinion Case**

- 1. *Intake.* Opinion cases go through the following stages by the Clerk’s Office.
  - a. Filing Of Case With Court Initial papers are filed with the Clerk’s Office.

- b. Provisional Docketing Court file is opened and docket number is assigned.
  - c. Jurisdictional Review Staff attorney reviews the papers for conformance with the court rules and for jurisdictional prerequisites.
  - d. Transfer Of File To District Clerk's Office Staff attorney signs off on the file and it is forwarded to the district office for the district in which the originating trial court is located. District clerk's staff reviews all papers and confirms that the case docket (register of actions) is current and accurate.
  - e. Case Flow Management The Clerk's Office manages all cases (whether ultimately disposed by opinion or order) on a succession of management (tickler) lists. Computer programming moves the cases through the lists as deadlines are met or as they pass without required filings having been made. If a deadline is not met at the required time, procedures are triggered which include warning letters to the party, attorney, court reporter or trial court; orders to show cause; assessment of costs; and/or involuntary dismissals or remands for appointment of new counsel. Stages that are tracked include:
    - (1) **Appellant's Filing Of Transcript Order** MCR 7.210(B)(1)(a).
    - (2) **Court Reporter's Filing Of Stenographer's Certificate Acknowledging Transcript Order** MCR 7.210(B)(3)(a).
    - (3) **Court Reporter's Filing Of Notice Of Filing Transcript** MCR 7.210(B)(3)(e).
    - (4) **Filing Of Appellant's Brief** MCR 7.212(A)(1)(a).
    - (5) **Filing Of Appellee's Brief** MCR 7.212(A)(2)(a).
    - (6) **Trial Court's Transmission Of Record Upon COA Request** MCR 7.210(G).
    - (7) **Noticing Of Case For Submission To Court And Simultaneous Placement Of Case On List Of Cases That Are Ready For The Research Division** MCR 7.213(B).
2. *Warehouse.* When cases are *ready for research*, they are at the stage that is called the *Warehouse* in this report. The *Warehouse* contains cases in which the transcripts have been produced, appellant's brief has been filed, appellee's brief has been filed or the time for filing it has elapsed, and the record has been transmitted by the trial court.
- a. Request For Cases When the Prehearing or Senior Research offices need additional cases on which to prepare research reports for case call, they contact the Case Screener to schedule a "screening" in the district Clerk's Office where the lower court records and appeal briefs are warehoused.

- b. Screening The Case Screener is provided with the briefs, transcripts and records for as many of the next oldest cases on the *Ready for Research* list as have been requested. The Case Screener reviews the issues raised on appeal and the size of the lower court transcripts and records, and estimates the number of days that it should take an average Prehearing Attorney to complete a report. This is called a *case day evaluation*. The different units of the Research Division have varying production requirements based on the case day evaluations.
- c. Sent To Research Following screening, the Clerk's Office forwards most cases to the particular Research Division office that requested the screening. Some cases may be sent to another office depending upon their day evaluations, e.g., cases evaluated at more than seven days are sent to Senior Research regardless of which office requested the screening.

### 3. *Research*

- a. Report Preparation Cases with priority status are assigned first to the attorneys; all others are assigned on a first-in, first-out basis. In preparing reports, the attorneys strive to (1) clearly present the factual and procedural background of the cases in a neutral, unbiased tone; (2) fully address the parties' legal arguments; (3) thoroughly research the applicable law and present it in a logical and understandable fashion; and (4) make recommended dispositions based on well-reasoned application of the law to the facts with as much citation to supporting authority as the complexity of the case dictates.
- b. Editing and Research Evaluation When a research report is completed, it is reviewed for substance and style by a supervising attorney. If necessary, the report may be returned to the authoring attorney for additional research and analysis. When no further editing of the report is required, the supervisor assigns a *degree of difficulty evaluation* to the case, which represents the complexity of the case and which is used to balance the workload among the three judges on the case call panel. At this stage, the case is ready for call.

### 4. *Judicial Chambers*

- a. Assignment Of Cases To Case Call Panels Each month, the Clerk's Office assigns available cases to three-Judge case call panels using a computerized random assignment program. Three types of panels are used by the Court:
  - (1) **Regular or "Weighted" Panels** The cases assigned to these panels are accompanied by research reports prepared by the Research Division. Each Judge receives an equal number of difficulty evaluation points. Beginning in October 2001, each Judge has also received one summary disposition appeal without a research report to bolster the Court's delay reduction efforts. In calendar 2001, approximately twenty-seven to thirty cases were submitted to each of the seventy-one regular panels that sat during the year.

(2) **Complex Panels** The cases assigned to these panels are not accompanied by research reports; rather, the assigned Judge and his or her law clerk are responsible for preparing a bench memo for circulation to the other two Judges in advance of oral argument. Assignment of the cases is based on their day evaluations, with each Judge receiving a total of twenty-one to twenty-two evaluation days (usually two or three cases). In calendar 2001, an average of six cases per panel were submitted to each of the sixteen complex panels that sat during the year.

(3) **Summary Panels** The cases assigned to these panels are accompanied by research reports and proposed opinions. Sixty cases are assigned to each summary panel, approximately forty of which are cases evaluated at one to three days, fifteen to twenty are routine termination of parental rights appeals, and two to five are guilty plea appeals. In calendar 2001, thirteen summary panel sat during the year.

In the aggregate, the Court submitted an average of 240 cases monthly to the three types of panels during calendar 2001.

- b. Transmission Of Briefs, Records And Research Reports To Judges On the day that the case call is finalized in the Clerk's Office, each office of the Clerk and of the Research Division is notified to begin sending the briefs, records, and research reports to the assigned panels of Judges. Each Judge on each panel receives the same set of documents for every case, regardless of writing assignments. The Judge assigned to author the opinion will receive the lower court record. Regular panels receive their documents [briefs, lower court records, and research reports (if any)] approximately two to six weeks before oral argument, depending whether a research report is included. Complex panels receive their documents [briefs and lower court records] approximately ten weeks before argument. Summary panels receive their documents [briefs, lower court records, and research reports] approximately three to four weeks before the submission date.
- c. Preparation For Case Call Upon receipt of the case call assignment list, the judicial chambers open a file where they will compile the briefs, records and research reports as they are received from elsewhere in the Court. Practice varies within the chambers, but the files are then reviewed by the Judge and the law clerk. For cases submitted to complex panels, the Judge's law clerk will play a significant role in preparing the bench memo that is distributed to the other judges in advance of oral argument.
- d. Participation In Case Call Case call panels sit for two or three days each month. Oral argument is heard in all cases in which the parties have met the requirements of the court rules or as ordered by the Court. Following argument, the panels conference on site and discuss disposition of the cases. On the day of case call, assigned cases will appear on the Court's opinion status report where they can be tracked through the circulation, voting and filing stages.

- e. Following Case Call After case call has been held, each chambers will work to draft and circulate opinions in outstanding cases. Court policies set time standards for this process and address issues such as a Judge's failure to vote on a circulated opinion within a pre-set period of time. Cases that are outstanding on a Judge's list longer than designated under Court policy are classified as *exceptions* and carried in a separate section of the Court's opinion status reports.

## E. Case Filings Over Time

1. *Filings And Dispositions* As Chart 1 and Graphs 1 and 2 below indicate, there has been a marked change in filings with the Court over the last 15 years. Filings per Judge and dispositions per Judge, although influenced by the addition of new Judges,<sup>8</sup> followed the same pattern.

**Chart 1**

Year	Filings Per Year	Filings Per Judge	Dispositions Per Year	Dispositions Per Judge
1986	7,966	443	6573	365
1987	8,186	455	7502	417
1988	8,546	475	8508	473
1989 <sup>9</sup>	10,951	456	8983	374
1990	12,369	515	10504	438
1991	11,825	493	10237	427
1992	13,352	556	11662	486
1993	12,494	520	13037	543
1994	11,287	470	12824	534
1995 <sup>10</sup>	10,370	370	12596	450
1996	9,108	325	10842	387
1997	8,866	316	10242	366
1998 <sup>11</sup>	8,264	295	8806	315
1999	7,731	276	7715	276
2000	7,460	266	7799	279
2001	7,102	254	7593	271

Thus, from 1986 to 1992, filings with the Court increased by approximately 68%, from 7,966 to 13,352. During the same time period, filings per Judge increased by

<sup>8</sup> The Court has, over the years, also used visiting judges. In 1994 the Court used the approximate equivalent of 11 additional COA judges; in 1995 the approximate equivalent of 10 additional COA judges; and in 1996 the approximate equivalent of 11 additional COA judges. More recently, however, the use of visiting judges has declined sharply. In 1999, the Court used the approximate equivalent of 0.73 additional COA judges; in 2000, 0.82 additional COA judges; and in 2001 0.45 additional COA judges. Chart 1 does not include the effect of visiting judges.

<sup>9</sup> Six Judges were added in this year to bring the total to 24.

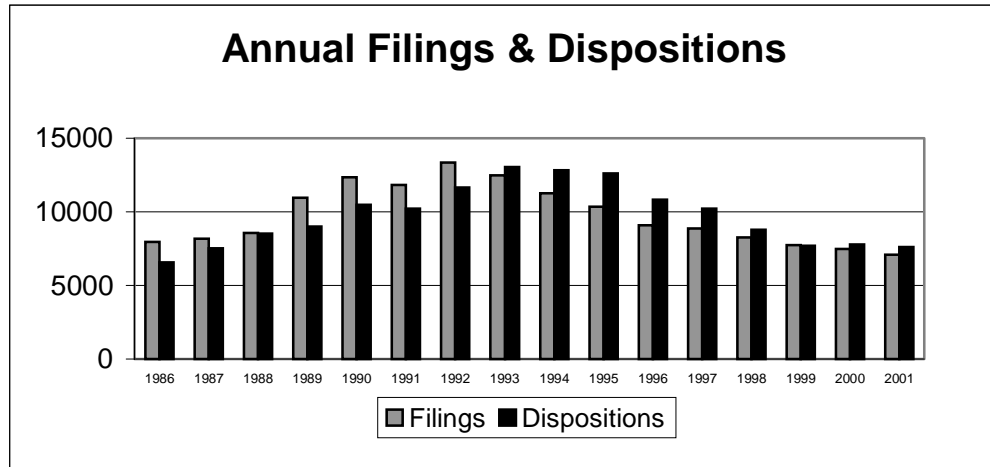
<sup>10</sup> Four Judges were added in this year to bring the total to 28.

<sup>11</sup> The Court changed its method of counting the number of filings. Prior to 1998, Court of Appeals' statistics reflected one case per each lower court number that was referenced in a file. Starting in 1998, Court statistics reflect one case for each appeals court docket number regardless how many lower court docket numbers may be referenced in that file. Court of Appeals filing trends represent both a decrease in filings and changes in case counting methods.

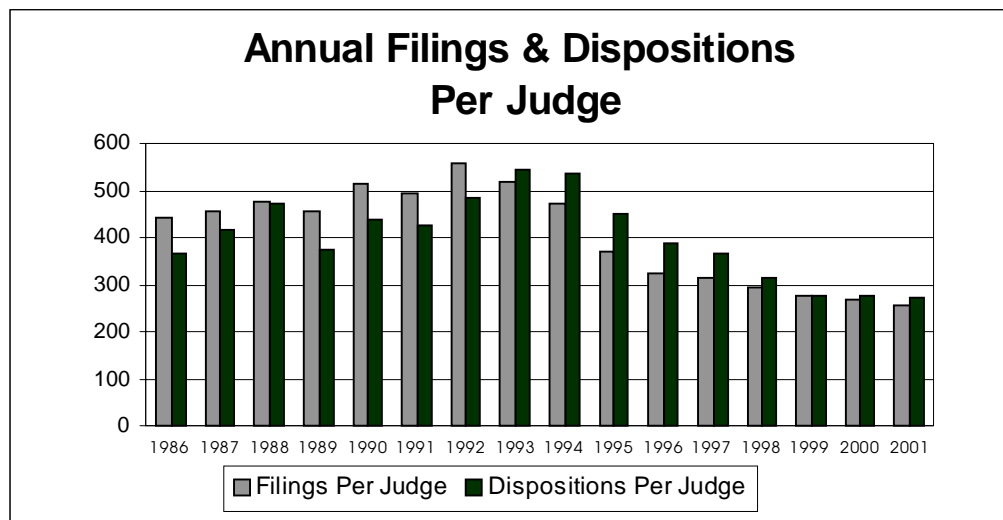


approximately 26%, from 443 to 556, and dispositions per Judge increased by approximately 33%, from 365 to 486. However, from 1992 to 2001, filings with the Court decreased by approximately 47%, from 13,352 to 7,102. During the same time period, filings per Judge decreased by approximately 54%, from 556 to 254, and dispositions per Judge decreased by approximately 44%, from 486 to 271. The graphs below highlight these increases and decreases in total filings and dispositions (Graph 1), and in filings and dispositions per judge (Graph 2).

**Graph 1**



**Graph 2**



In part, this decline resulted from the constitutional amendment that abolished appeals of right following guilty pleas, in part it resulted from the effects of tort reform, in part it may have resulted from a strong economy, and in part it may signal at least the beginnings of something of a sea change in societal attitudes toward litigation.

2. *Case Difficulty* Cases being filed with the Court that the Court decides by opinion are becoming more difficult. As explained above, one of the ways in which the Court

evaluates the difficulty of a case is by determining how many days it will take a research attorney to prepare a research report in an opinion case; this is called a case day evaluation. The Court has tracked statistics as to case day evaluations since 1992. Chart 2 shows the annual averages since that time and demonstrates that the cases are increasing in difficulty as measured by case day evaluations.

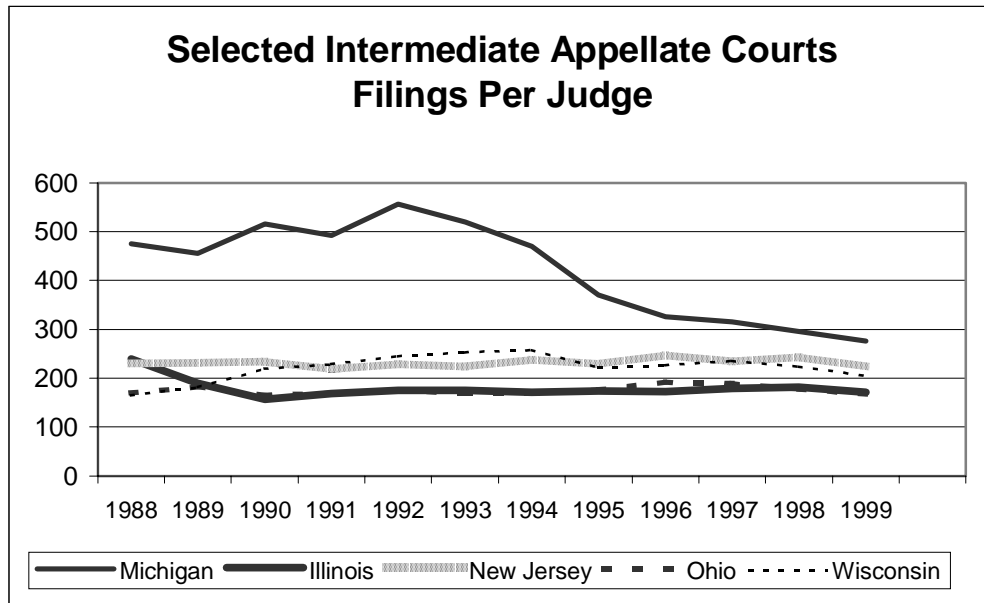
**Chart 2**

<b>Year</b>	<b>Average Day Evaluation of Cases</b>
1992	3.02
1993	3.49
1994	3.33
1995	3.49
1996	3.72
1997	3.94
1998	3.84
1999	4.09
2000	4.43
2001	4.42

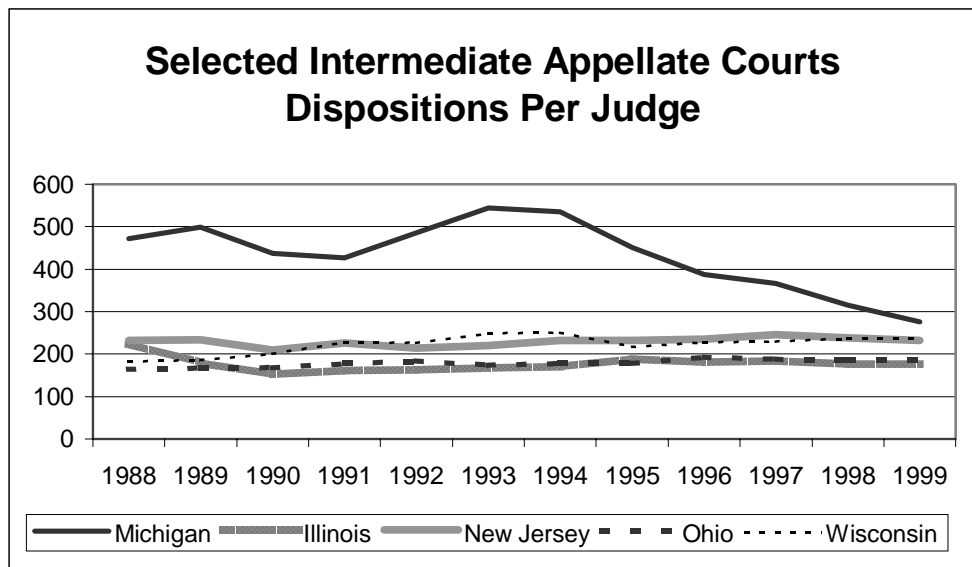
On a percentage basis, this increase is significant. The increase in average days spent preparing research reports from 3.72 days in 1996 to 4.42 days in 2001 represents a 19% increase. Therefore, at least arguably, opinion cases were approximately 19% more difficult in 2001 than they were in 1996.

3. *Comparisons With Other States* As Graphs 3 and 4 show, the decline in filings and dispositions per Judge is somewhat unique to Michigan. In comparable states, such as Illinois, New Jersey, Ohio, and Wisconsin, filings and dispositions per Judge have remained fairly stable, although at considerably lower levels than Michigan.

Graph 3



Graph 4



## F. Resources Over Time

1. *Appropriations* As Chart 3 shows, in constant 2001 dollars, the appropriations for the Court, and the appropriations per Judge, have increased since 1989 by 39% with respect to appropriations, and by 19% with respect to appropriations per Judge. The increases in appropriations for the Court are related to increases for information systems and court security.

**Chart 3**

<b>Fiscal Year</b>	<b>Appropriation Excluding Judges' Salaries</b>	<b>Calendar Year Detroit CPI</b>	<b>Appropriation Translated into 2001 Dollars</b>	<b>Appropriation Per Judge</b>
1989	\$11,008,000	122.3	\$15,733,429	\$655,559.55
1990	\$11,227,300	128.6	\$15,260,747	\$635,864.45
1991	\$12,277,800	133.1	\$16,124,414	\$671,850.56
1992	\$12,646,100	135.9	\$16,265,918	\$677,746.59
1993	\$13,885,600	139.6	\$17,386,840	\$724,451.67
1994	\$16,436,100	144	\$19,951,599	\$831,316.63
1995	\$18,350,100	148.6	\$21,585,447	\$770,908.83
1996	\$19,283,700	152.5	\$22,103,546	\$789,412.36
1997	\$18,840,800	156.3	\$21,070,837	\$752,529.90
1998	\$19,043,800	159.8	\$20,831,391	\$743,978.24
1999	\$19,379,200	163.9	\$20,667,994	\$738,142.63
2000	\$19,704,800	169.9	\$20,273,096	\$724,039.15
2001	\$21,372,400	174.8	\$21,372,400	\$763,300.00
2002	\$21,796,539	-	-	\$778,447.82

2. *Attorneys Per Judge* However, as Chart 4 shows, the staff directly concerned with the research necessary for the proper consideration, preparation, and issuance of orders and opinions – that is, attorneys employed by the Court – has fluctuated with increases and decreases in case filings, with the number of Judges, and with changes in the economy.

**Chart 4**

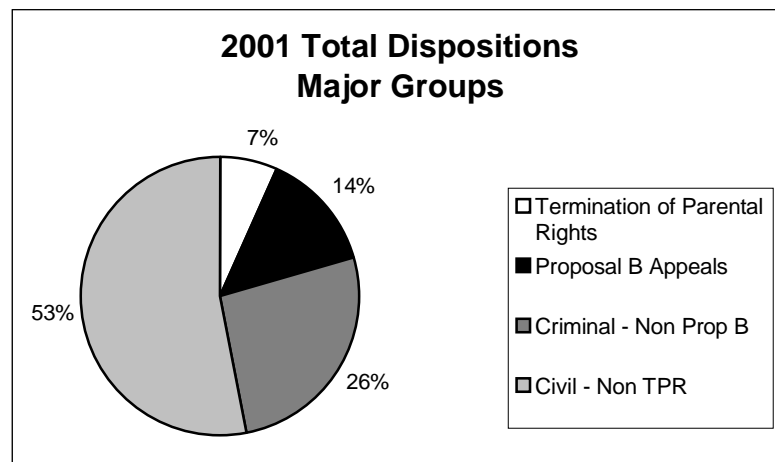
<b>Year</b>	<b>Staff Attorneys<sup>12</sup> Employed By Court</b>	<b>Attorneys Per Judge</b>
1987	71	3.9
1988	67	3.7
1989	84	3.5
1990	80	3.3
1991	62	2.6
1992	75	3.1
1993	89	3.7
1994	103	4.3
1995	113	4.0
1996	103	3.7
1997	108	3.9
1998	106	3.8
1999	102	3.6
2000	101	3.6
2001	98	3.5

<sup>12</sup> Includes Prehearing Attorneys, Senior Research Attorneys, Commissioners, and Judicial Chambers Law Clerks.

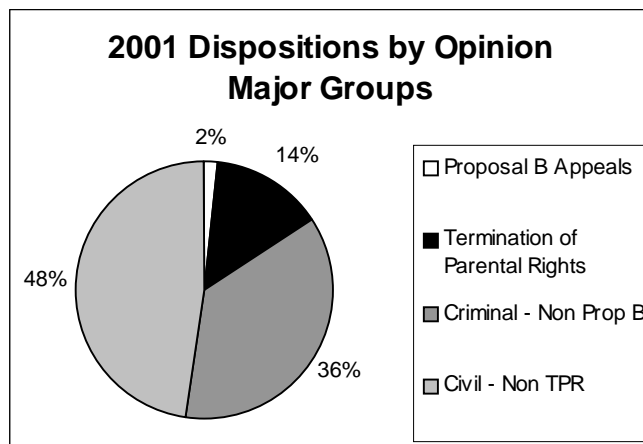
## G. Dispositions In 2001

1. *Major Groupings Of Dispositions* Graph 5 focuses on 2001 and shows the major groupings of dispositions, whether by order or opinion. Graph 6 shows the major groupings of dispositions by opinion. Graph 7 shows the major groupings of dispositions by order.

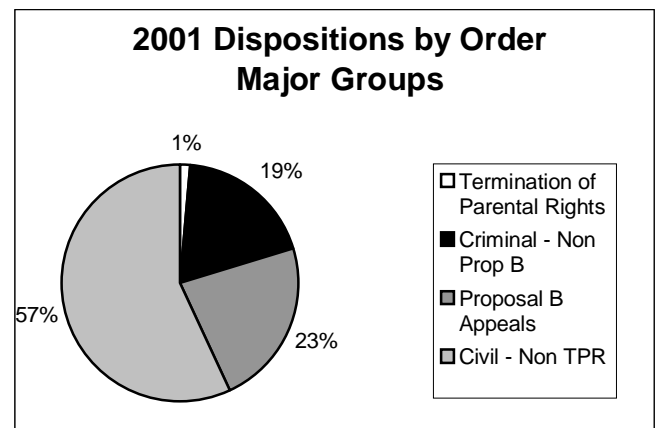
Graph 5<sup>13</sup>



Graph 6



Graph 7

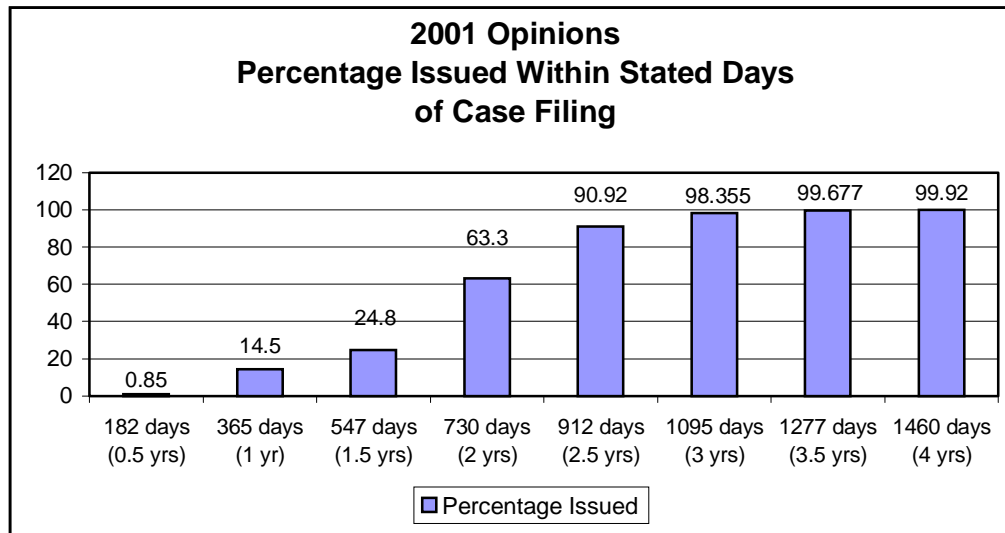


2. *Orders Versus Opinions* In 2001, the Court disposed of approximately 7600 cases by opinion and order. Of these, the Court disposed of about 4500 cases by order and 3100 by opinion. The average time from filing to initial disposition for order cases was approximately 130 days. This Report, therefore, will deal below *only* with

<sup>13</sup> In November of 1994, an amendment to the Michigan Constitution referred to as "Proposal B," was ratified by the electorate which provided that, effective December 24, 1994, an appeal by an accused who pleaded guilty or nolo contendere would thereafter be by leave of the Court rather than as a matter of right.

opinion cases. Further, this Report deals below *only* with opinions issued in each case in 2001 from the following categories: authored opinions, published per curiam opinions, unpublished per curiam opinions, and memorandum opinions.<sup>14</sup> As Graph 8 illustrates, the Court decided 14.5% of its included opinion cases within 12 months of filing, 24.8% of its included opinion cases within 18 months of filing, 63.3% of its included opinion cases within 24 months of filing, and 90.92% of its included opinion cases within 39 months of filing.

**Graph 8**



### 3. *Average Times To Disposition*

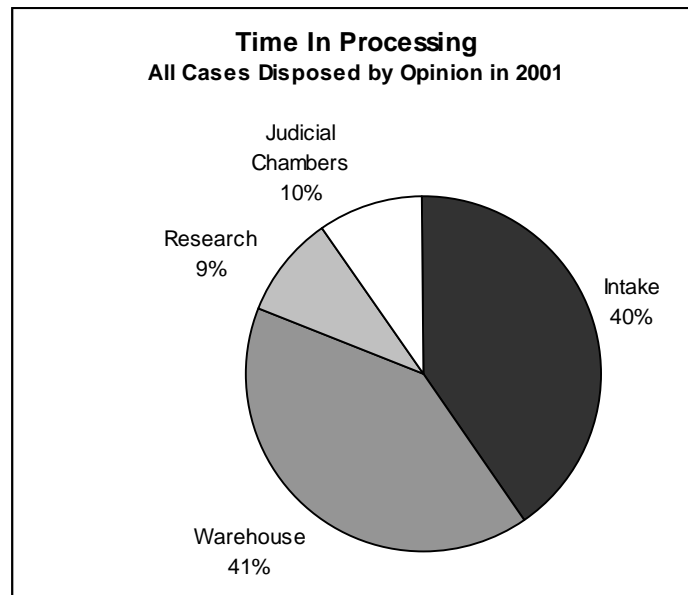
- a. Overall Overall, in 2001, the average time to disposition of the included opinion cases was 654 days from case filing. The median time to disposition was 679 days from case filing. The time to disposition ranged from 127 days to 1638 days from case filing.

<sup>14</sup> The Report does not analyze opinions after remand, on remand from the Supreme Court, or on rehearing; these categories represent a very small percentage of the Court's opinion cases and will artificially skew the data if they are considered.

- b. Average Case Processing Times Chart 5 shows this situation from a case-processing perspective. The Chart delineates the average days within each major stage of case processing as well as the cumulative average days from case filing.

**Chart 5**

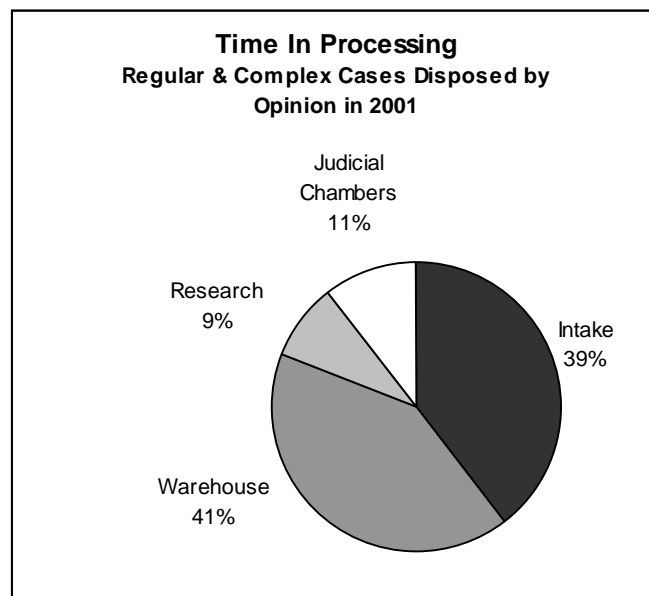
<b>Major Stages in Case Processing All Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	263	263
<b>Warehouse</b>	266	529
<b>Research</b>	61	590
<b>Judicial Chambers</b>	64	654



- c. Average Case Processing Times In Regular And Complex Cases Chart 6 reflects the major stages for cases submitted on the regular and complex case call panels.

**Chart 6**

<b>Major Stages in Case Processing Regular &amp; Complex Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	274	274
<b>Warehouse</b>	288	562
<b>Research</b>	60	622
<b>Judicial Chambers</b>	73	695

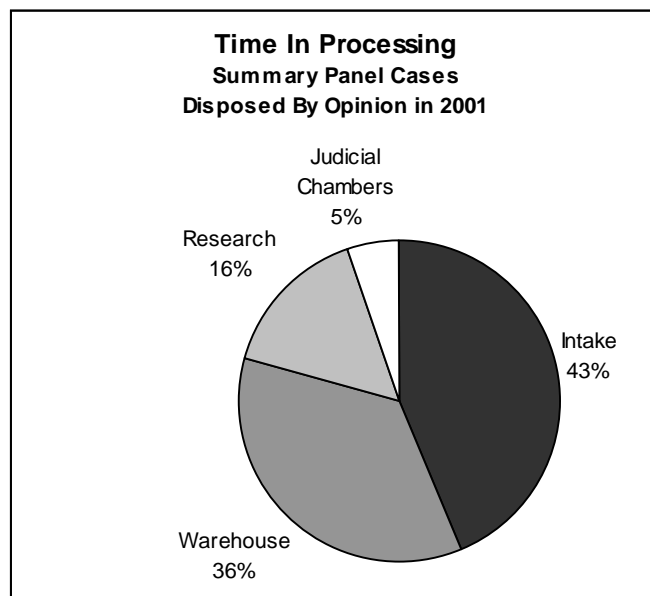




- d. Average Case Processing Times For Summary Panel Cases Chart 7 reflects cases submitted to summary panels.

**Chart 7**

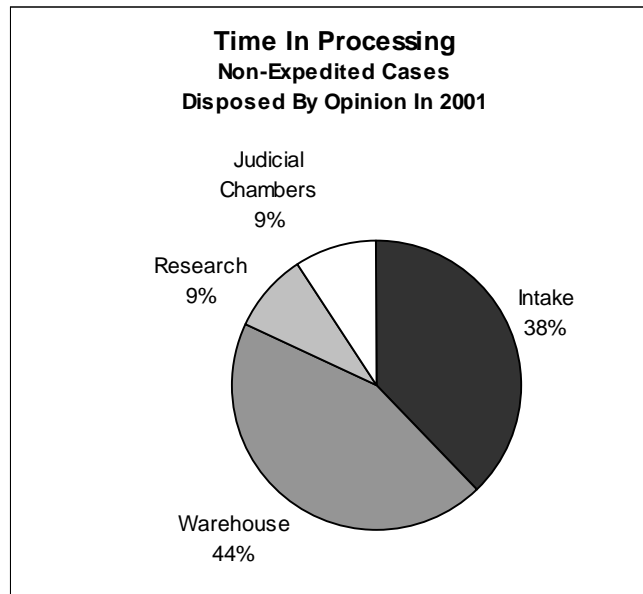
<b>Major Stages in Case Processing Summary Panel Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	232	232
<b>Warehouse</b>	190	422
<b>Research</b>	84	506
<b>Judicial Chambers</b>	28	534



- e. Average Case Processing Time For Non-Expedited Cases Chart 8 reflects cases that are not expedited by rule or order.

**Chart 8**

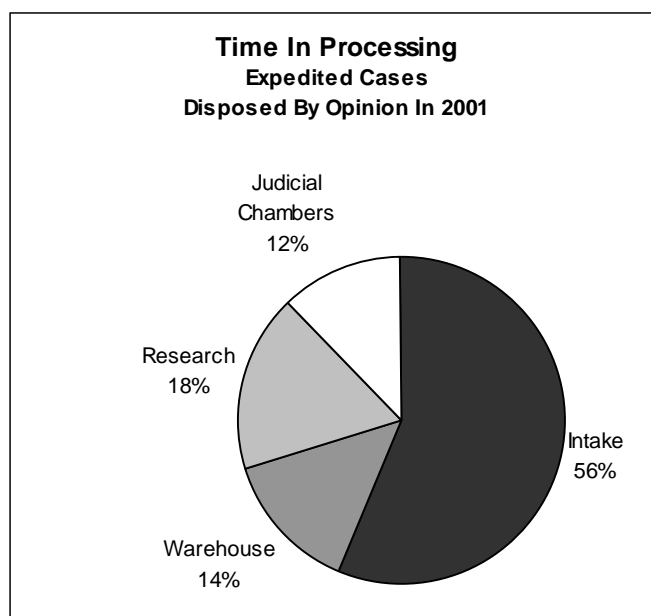
<b>Major Stages in Case Processing Non-Expedited Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	281	281
<b>Warehouse</b>	330	611
<b>Research</b>	65	676
<b>Judicial Chambers</b>	68	744



- f. Average Case Processing Times For Expedited Cases Chart 9 reflects cases that are expedited, either by rule or order.

**Chart 9**

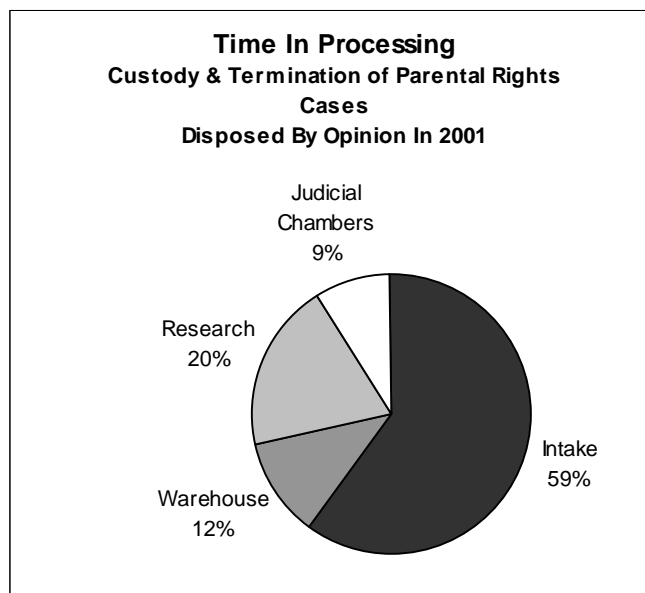
<b>Major Stages in Case Processing Expedited Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	197	197
<b>Warehouse</b>	49	246
<b>Research</b>	62	308
<b>Judicial Chambers</b>	43	351



- g. Average Case Processing Times For Child Custody And Termination Of Parental Rights Cases Chart 10 breaks out from Chart 9 those cases that are expedited because they involve child custody or termination of parental rights.

**Chart 10**

<b>Major Stages in Case Processing Custody &amp; Termination of Parental Rights Cases Disposed by Opinion in 2001</b>	<b>Average Days Within Each Stage</b>	<b>Average Days From Filing of Case</b>
<b>Intake</b>	194	194
<b>Warehouse</b>	38	232
<b>Research</b>	64	296
<b>Judicial Chambers</b>	29	325



- h. Summary Of Processing Times - Major Types Of Cases Chart 11 summarizes the differences in case processing times between the major types of cases.

**Chart 11**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non- Expedited</b>	<b>Expedited</b>	<b>Custody/ TPR</b>
Intake	263	274	232	281	197	194
Warehouse	266	288	190	330	49	38
Research	61	60	84	65	62	64
Judicial Chambers	64	73	28	68	43	29
TOTAL	654	695	534	744	351	325

## **H. Conclusions**

1. *Filings And Dispositions* Case filings at the Court have fluctuated widely over time, from a high of 13,352 in 1992 to a low of 7,102 in 2001. Filings per Judge and dispositions per Judge have also fluctuated, in response to changes in case filings and in the number of Judges on the Court.
2. *Case Difficulty* As reflected in case evaluations since 1992, cases filed with the Court are becoming somewhat more difficult.
3. *Comparisons With Other States* Despite the decline in case filings since 1992, the volume of cases filed with the Court still exceeds that in the comparable states of Illinois, New Jersey, Ohio, and Wisconsin. The significant decline in filings in Michigan has not occurred in these other comparable states.
4. *Resources Over Time* Measured in constant 2001 dollars, appropriations for the Court have increased by 39% since 1989 and appropriations per Judge have increased by 19%. However, the number of attorneys employed by the Court has fluctuated with increases and decreases in case filings, with the number of Judges, and with changes in the economy.
5. *Dispositions By Order* In 2001, the Court disposed of approximately 4,500 cases by order. The average time from filing to disposition of such order cases was approximately 130 days. This figure is within acceptable limits.
6. *Dispositions By Opinion*
  - a. Overall In 2001, the Court disposed of approximately 3,100 cases by opinion. The average time from filing to disposition of such order cases was approximately 654 days. Further, the Court disposed of only 14.5% of its opinion cases within 12 months of filing and 24.8% of its opinion cases within 18 months of filing. These figures are *not* within acceptable limits.

- b. Stages In Processing On average, the overwhelming number of days in the major processing stages for opinion cases in 2001 was in Intake and Warehouse, a cumulative 529 days out of the total of 654 days. On average, an opinion case spent 61 days in Research and 64 days in the Judicial Chambers in 2001.
- c. Regular And Complex Cases Versus Summary Panel Cases As might be expected, it took more time in 2001, 695 days on average, to dispose of regular and complex opinion cases than it took, 534 days on average, to dispose of summary panel cases.
- d. Non-Expedited Versus Expedited Cases Again as might be expected, it took more time in 2001, 744 days on average, to dispose of non-expedited opinion cases than it took, 351 days on average, to dispose of expedited opinion cases.

### III. REDUCING DELAY IN THE JUDICIAL CHAMBERS

**A. Overview** Based upon 2001 statistics, the Work Group believes it fair to say that the Court is not experiencing serious delays in the Judicial Chambers. On an overall basis the wait in the Judicial Chambers in 2001 was approximately 64 days on average. Nevertheless, it is of considerable importance that the Judges of the Court take the lead in reducing delay. Further, the Judicial Chambers represent the logical place to begin the process of “tracking” opinion cases by major category, a process that, if it is successful, can then be applied to the other stages.

The Work Group also recognizes that the Judges of the Court have, on an interim basis commencing in December of 2001, succeeded in increasing the productivity in the Judicial Chambers. Perhaps the most significant statistics relate to the decrease in the total number of outstanding opinions that have been assigned to the Judges to write but that have not been filed. As Chart 12 shows, this number has decreased within each of the three months of the Court’s interim delay reduction effort.<sup>15</sup>

**Chart 12**

<b>Date</b>	<b>Assigned Cases</b>
12/7/01	536
1/4/02	266
2/1/02	285
3/1/02	271

The Work Group believes that this interim effort is a solid base upon which the Judges of the Court can build in order to reduce further the delay in the Judicial Chambers.

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<sup>15</sup> Some part of this decrease is attributable to a change in the method by which the Court “loads” cases into its opinion status report. Prior to January 2002, the Court loaded all of the months’ case call cases on the first day of that month. Commencing January 2002, the Court loaded the cases into the system during the week in which the cases were actually heard.

**B. Goal** Further reduce the delay in the Judicial Chambers.

**C. Objective** By January 1, 2003 reduce the overall average time that an opinion case spends in the Judicial Chambers to approximately 49 days from the time a case is submitted.<sup>16</sup>

**D. Recommendations**

1. *Recommendation 1: Decide 100% of Custody/TPR opinion cases within 42 days of submission of the case to the panel.* The Work Group projects that the implementation of this recommendation will save, on average, one day<sup>17</sup> in the time the average opinion case spends in the Judicial Chambers.
  - a. Circulation By Authoring Judge The Work Group recommends that the authoring Judges circulate the proposed opinion within 28 days of the submission of the case to the panel.
  - b. Responses To The Proposed Opinion The Work Group recommends that the other Judges on the panel respond to the proposed opinion, by vote, concurrence, or dissent, within 14 days of receipt of that proposed opinion.
2. *Recommendation 2: Decide 100% of the remaining Expedited opinion cases (excluding Custody/TPR opinion cases) within 49 days of submission of the case to the panel.* The Work Group projects that the implementation of this recommendation will save, on average, two days in the time the average opinion case spends in the Judicial Chambers.
  - a. Circulation By Authoring Judge The Work Group recommends that the authoring Judge circulate the proposed opinion within 35 days of the submission of the case to the panel.
  - b. Responses To The Proposed Opinion The Work Group recommends that the other Judges on the panel respond to the proposed opinion, by vote, concurrence, or dissent, within 14 days of receipt of that proposed opinion.
3. *Recommendation 3: Decide 100% of the Summary Panel opinion cases within 42 days of submission of the case to the panel.* The Work Group projects that the implementation of this recommendation will save, on average, 1/3 of a day in the time the average opinion case spends in the Judicial Chambers.
4. *Recommendation 4: Decide 100% of the Regular/Complex Panel opinion cases within 105 days of submission of the case to the panel.* The Work Group projects that the implementation of this recommendation will save, on average, 12 days in the time the average panel opinion case spends in the Judicial Chambers.

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<sup>16</sup> For regular and complex panels, a case is “submitted” on the date of oral argument. For summary panels, a case is “submitted” on the calendared day.

<sup>17</sup> All average day estimates are rounded down.

- a. Circulation By Authoring Judge The Work Group recommends that the authoring Judge circulate the proposed opinion within 77 days of the submission of the case to the panel.
- b. Responses To The Proposed Opinion The Work Group recommends that the other Judges on the panel respond to the proposed opinion, by vote, concurrence, or dissent, within 28 days of receipt of that proposed opinion.

**E. Conclusion:** In the aggregate, if implemented, these recommendations will save, on average, approximately 15 days in the Judicial Chambers. Based on 2001 statistics, this will reduce the wait in the Judicial Chambers from the current level of 64 days to 49 days. This is a reduction of approximately 23% in the time a case spends in the Judicial Chambers. Chart 13 summarizes this delay reduction effect.

**Chart 13**

<b>Time In The Judicial Chambers January 1, 2003</b>		
<b>Recommendation</b>	<b>Proposed Reduction in Overall Average</b>	<b>Aggregate Decrease</b>
Recommendation 1	1 Day	1 Day
Recommendation 2	2 Days	3 Days
Recommendation 3	1/3 Day	3 1/3 Days
Recommendation 4	12 Days	15 1/3 Days
Totals:	15 Days	15 Days
Current Overall Average: 64 Days Proposed Reduction: 15 Days Projected Overall Average: 49 Days Percentage Decrease: 23%		

#### **IV. REDUCING DELAY IN THE WAREHOUSE**

**A. Overview** Based upon 2001 statistics, the most troublesome of the four basic stages relating to the processing of opinion cases is the Warehouse stage. First, the wait in the Warehouse was the longest of any of the stages, approximately 266 days on average in 2001. Second, when an opinion case is waiting in the Warehouse, absolutely nothing is happening to it; it is simply waiting because there are not enough attorneys in the Research Division to accommodate additional cases. Given existing budget constraints, it is not realistic to expect that the Court can add new attorneys to the Research Division within the next 18 months. Therefore, the Court must act to reduce the wait in the Warehouse by changing and improving its operations without additional resources and without reallocation of existing resources. The Work Group makes six recommendations, below, that it believes will substantially reduce the wait in the Warehouse.



**B. Budget Constraints** A review of the Court's recent budget history demonstrates that the Court will not be able to devote additional resources to delay reduction in the next 18 months. The Court's original appropriation for FY 2002 was \$22,004,400, exclusive of the separate line item for judicial salaries. Given the downturn in the economy and the events of September 11, it became readily apparent shortly after the commencement of FY 2002 that the state would need to reduce expenditures. The Court's share of this reduction was \$207,900.

However, there was another, hidden, reduction in the Court's FY 2002 budget, related to revenues. The Court's FY 2002 appropriation contained special revenue funds from filing and motion fees of approximately \$1,648,800, which reduced the Court's actual appropriation by that amount. On the surface this would appear rational and, in fact, it would be if the Court had any chance of actually receiving \$1.6 million in fees. On an extrapolated basis for FY 2002, however, the Court will receive approximately \$315,000 less in revenue than was budgeted. In every sense, therefore, this was an additional budget cut for FY 2002 of \$315,000.

At the time of the preparation of this Report, the Court faces the same problem for FY 2003, compounded somewhat by additional "technical" reductions of \$132,800 from the Court's baseline budget. Once again, the Court faces a hidden budget cut due to the overestimate of revenues. When the effect of the reduction in appropriations in FY 2002 (\$207,900), the hidden budget cut (currently estimated at approximately \$315,000) and the "technical" reductions (\$132,800) are all taken into account, the Court will have \$655,700 fewer dollars at its disposal over the next 18 months, compared to its situation on October 1, 2001.

Therefore, there is no question that *additional* resources will not be available to the Court for the next 18 months. The Work Group has carefully considered whether to recommend reallocation of *existing* resources through a variety of measures. Given the current uncertainty as to the Court's FY 2003 budget, the Work Group has concluded that it would not be prudent to recommend such a reallocation at this time. Therefore, the Work Group's recommendations, below, concentrate solely on measures that do not require either additional resources or the reallocation of existing resources.

**C. Goal** Substantially reduce the delay in the Warehouse.

**D. Objective** By September 30, 2003 reduce the overall average time that an opinion case spends in the Warehouse to approximately 212 days.

**E. Recommendations**

1. *Recommendation 1 Couple summary case call panels with complex case call panels.*

- a. **Description** Commencing July 1, 2002, summary case call panels would precede and be linked to complex case call panels.

b. Implementation

- (1) **Unanimity** The Court would rescind its internal policy requiring unanimity as to the outcome and would allow concurrences and dissents to summary case call panel opinions.
  - (2) **Oral Argument** If a Judge on a summary case call panel wishes to hear oral argument, the panel would request the Clerk's office to schedule such oral argument, presumably in tandem with oral argument on the following month's complex case call panel cases. The effect of rescinding the unanimity policy and of requiring the scheduling of oral argument, if requested by a Judge, would be to eliminate the possibility that a case could be removed, or "kicked," from the consideration of the summary case call panel to which it was originally assigned.
  - (3) **Reports, Draft Opinions, And Bench Memos** The summary case call panels would continue to receive research reports and draft opinions; the complex case call panels would continue to be responsible for preparing bench memorandums.
  - (4) **Mandatory Change** The change would be Court-wide and would not involve the use of volunteers.
- c. Delay Reduction Effect Assuming 7100 filings with the Court in the 12-month period commencing July 1, 2002, assuming roughly the same characteristics in those filings that existed in the filings in 2001, and assuming no change in staffing levels, the Work Group projects that the implementation of this recommendation will save, on average, four days in the time an opinion case waits in the Warehouse. The calculations, and the data supporting these calculations, are quite complex and these projections should be viewed as estimates only.

2. *Recommendation 2: Add additional volunteer summary panels.*

- a. Description Commencing July 1, 2002, the Court would schedule additional summary case call panels.
- b. Implementation
  - (1) **Voluntary Participation By Judges** The program would be voluntary. Once the volunteers are identified, the assignment of panels and the selection of cases for the panels would be random.
  - (2) **Cases** Each volunteer summary case call panel would receive 12 cases, with each Judge to write four cases. The cases would be evaluated at three-four days.

- (3) **Reports And Draft Opinions** The cases would come to the judicial chambers without research reports or draft opinions. The summary case call panels may choose to meet to discuss and resolve the issues. The Judges may circulate either bench memorandums or detailed PC opinions in the cases assigned to them to the other Judges on the panel for consideration and approval.
- (4) **Unanimity; Oral Argument** As with recommendation 1, the Court would rescind its internal policy requiring unanimity as to the outcome and would allow concurrences and dissents to summary case call panel opinions. If a Judge on a volunteer summary case call panel wishes to hear oral argument, the panel would contact the Clerk's Office to schedule such oral argument on a date set by the panel.
- (5) **Opinion Status Reports** The Court would prepare separate opinion status reports for volunteer summary case call panels.
- c. Delay Reduction Effect Subject to the same assumptions and caveats stated in Recommendation 1 and assuming nine volunteer panels will sit during the course of the year, the Work Group projects that the implementation of this recommendation will save, on average, nine days in the time an opinion case waits in the Warehouse.
- 3. *Recommendation 3: Increase the aggregate case day evaluation for complex case call panels:*
  - a. Description Commencing with the June, 2002 case call, the current limit of 22 aggregate case day evaluations per Judge on complex case call panels would be increased to 28 aggregate case day evaluations per Judge.
  - b. Delay Reduction Effect Subject to the same assumptions and caveats stated in Recommendation 1, the Work Group projects that the implementation of this recommendation will save, on average, five days in the time an opinion case waits in the Warehouse.
- 4. *Recommendation 4: Continue to assign one summary disposition appeal to each Judge on each regular case call panel without a research report or draft opinion.*
  - a. Description The Court would continue to assign one summary disposition appeal to each Judge on each regular case call panel.
  - b. Implementation
    - (1) **Case Day Evaluations** The summary disposition appeals would continue to be limited to those evaluated at three-four days.

- (2) **Employment Discrimination Appeals** Given their relative factual complexity, appeals from summary dispositions in employment discrimination matters would not be included.
  - (3) **Prehearing Reports And Draft Opinions** The cases would continue to come to the judicial chambers without research reports or draft opinions.
- c. Delay Reduction Effect Subject to the same assumptions and caveats stated in Recommendation 1, the Work Group projects that the implementation of this recommendation will save, on average, 16 days in the time an opinion case waits in the Warehouse.
- 5. *Recommendation 5: Assign one criminal appeal to each Judge on each regular case call panel without a research report or draft opinion.*
  - a. Description Commencing with the May 2002 case call, the Court would assign one criminal appeal to each Judge on each regular case call panel.
  - b. Implementation
    - (1) **Case Day Evaluations** The appeals would be limited to those evaluated at three-four days.
    - (2) **Prehearing Reports And Draft Opinions** The cases would come to the judicial chambers without research reports or draft opinions.
    - c. Delay Reduction Effect Subject to the same assumptions and caveats stated in Recommendation 1, the Work Group projects that the implementation of this recommendation will save, on average, 16 days in the time an opinion case waits in the Warehouse.
- 6. *Recommendation 6: Prepare only draft opinions, and not reports, in certain criminal appeals.*
  - a. Description Commencing immediately after the March 2002 Judges' meeting, Senior Research would prepare only draft opinions, and not reports, in certain criminal appeals.
  - b. Implementation This change would be have the following limitations:
    - (1) **Case Day Evaluations** The appeals would be limited to those evaluated at three- nine days.
    - (2) **Senior Research** The appeals would be limited to those assigned to Senior Research.

- (3) **Routine Issues** The appeals would be limited to those that contain only routine issues where no published opinion is required.
  - (4) **Briefs** The appeals would be limited to those in which both the prosecutor and the defendant have filed briefs.
  - (5) **Unpreserved Error** The draft opinions would contain no analysis of unpreserved error. If the panel deems it necessary the presiding Judge could request an analysis of an unpreserved error from the drafting attorney.
- c. Delay Reduction Effect Subject to the same assumptions and caveats stated in Recommendation 1, the Work Group projects that the implementation of this recommendation will save, on average, four days in the time an opinion case waits in the Warehouse.

**F. Conclusion** In the aggregate, if implemented, these recommendations will save, on average, approximately 54 days in the Warehouse. Based on 2001 statistics, this will reduce the wait in the Warehouse from the current level of 266 days to 212 days. This is a reduction of approximately 20% in the time a case spends in the Warehouse. Chart 14 summarizes this delay reduction effect.

**Chart 14**

<b>Time In The Warehouse September 30, 2003</b>		
<b>Recommendation</b>	<b>Proposed Reduction in Overall Average</b>	<b>Aggregate Decrease</b>
Recommendation 1	4 Days	4 Day
Recommendation 2	9 Days	13 Days
Recommendation 3	5 Day	18 Days
Recommendation 4	16 Days	34 Days
Recommendation 5	16 Days	50 Days
Recommendation 6	4 Days	54 Days
Totals	54 Days	54 Days
Current Overall Average: 266 Days Proposed Reduction: 54 Days Projected Overall Average: 212 Days Percentage Decrease: 20%		

## **V. REDUCING DELAY AT INTAKE**

**A. Methodology Constraints** Below, the Work Group makes a number of recommendations designed to reduce delay in the Intake stage. In estimating the time savings that may result from the adoption of these recommendations, the Work Group has necessarily utilized two different sets of statistics. Specifically, the Work Group has used the outside time

limits for various actions prescribed in the court rules and then has extrapolated a delay reduction effect by using the average day calculations derived from 2001 actual processing times. To a certain extent, this is an apples and oranges comparison and the Work Group therefore cautions that its projections for delay reduction at Intake should be regarded only as very rough estimates.

The Work Group also notes that all of its projections are based upon the assumption that 7100 cases will be filed with the Court in the 12-month period commencing July 1, 2002, and the assumption that these cases will have roughly the same characteristics that existed in the filings in 2001. It is certainly possible that these assumptions will prove to be accurate. It is, however, equally possible that this will not be the case. To illustrate, if case filings *increase* by 1000 cases within this 12-month time period, then the actions that the Work Group recommends above to reduce the delay in the Warehouse will be completely offset, and there will be no reduction whatever in that delay.

**B. Overview** Based upon 2001 statistics, the second most troublesome of the four basic stages relating to the processing of opinion cases is the Intake stage. Here, the wait was approximately 263 days on average in 2001. The Work Group recognizes, however, that it is simply unrealistic to expect that lawyers and the Bar generally will support actions to reduce this time until the Court had demonstrated that it has been able to reduce delay in the Warehouse and Judicial stages. Therefore, although the Work Group below recommends five significant changes to the Michigan Court Rules that it believes would substantially reduce delay in the Intake stage, it suggests that these changes not become effective until September 1, 2003. At that time, the Court, the Supreme Court and the Michigan State Bar should be able to confirm that the Court's short-term and medium-term efforts to reduce delay on appeal have been sufficiently successful to warrant more speedy processing of the Intake stage of each appeal.

**C. Goal** Substantially reduce the delay in Intake.

**D. Objective** By September 30, 2004, reduce the overall average time that an opinion case spends in Intake to approximately 176 days.

**E. Recommendations**

1. *Recommendation 1: Amend MCR 7.204 to reduce the time for filing a docketing statement in civil cases to 14 days.*
  - a. **Description** Currently, MCR 7.204 gives an appellant 28 days to file a docketing statement with the Clerk of the Court. The Work Group recommends that this be reduced to 14 days.
  - b. **Implementation**
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.

- (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect This recommendation will have no overall net effect on opinion case processing, because docketing statement preparation is parallel to the ordering and preparation of transcripts. However, earlier intervention by the Court's Settlement Office would improve the likelihood of settlement, because the parties will expend less time and money on record production and briefing if a case settles quickly.
- 2. *Recommendation 2: Amend MCR 7.210(B)(3)(b)(iv) to reduce the time for filing transcripts in summary disposition appeals from 91 days to 42 days.*
  - a. Description Currently, MCR 7.210(B)(3)(b)(iv) gives an appellant 91 days after a transcript is ordered to file that transcript with the Court [except for cases involving applications for leave to appeal from an order granting or denying a motion to suppress evidence in a criminal case; cases involving appeals from a criminal conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere; and cases involving any other interlocutory criminal appeal or custody case, which are covered by MCR 7.210(B)(3)(b)(i), (ii), and (iii) respectively]. The Work Group recommends that this be reduced to 42 days in cases involving appeals from summary disposition.
  - b. Implementation
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.
    - (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect Of the civil appeals pending on February 6, 2002, 34% involved a trial court's grant of summary disposition, grant of partial summary disposition, or denial of summary disposition. The Work Group projects that the implementation of this recommendation will save at least 49 days in the time spent waiting for the transcripts for appeals from such summary dispositions.
- 3. *Recommendation 3: Amend MCR 7.212(A)(1)(a)(iii) to delete all stipulations to extend the time to file an appellant's brief.*

- a. Description Currently, MCR 7.212(A)(1)(a)(iii) allows the parties to stipulate to extend the time for filing an appellant's brief by 28 days. The Work Group recommends that this be eliminated.
  - b. Implementation
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.
    - (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect The Work Group projects that the implementation of this recommendation will save at least 28 days in the time spent waiting for appellants' briefs in all cases that presently allow stipulations to extend time.
4. *Recommendation 4: Amend MCR 7.212(A)(2)(a)(ii) to delete all stipulations to extend the time to file an appellee's brief.*
- a. Description Currently, MCR 7.212(A)(2)(a)(ii) allows the parties to stipulate to extend the time for filing an appellee's brief by 28 days. The Work Group recommends that this be eliminated.
  - b. Implementation
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.
    - (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect The Work Group projects that the implementation of this recommendation will save at least 28 days in the time spent waiting for appellee's briefs in all cases that presently allow stipulations to extend time.



5. *Recommendation 5: Amend MCR 7.212(A)(1)(a)(iii) and MCR 7.212(A)(2)(a)(ii) to provide that motions to extend the time for filing briefs may be granted only on good cause shown and then only for a maximum of 14 days.*

a. Description Currently, MCR 7.212(A)(1)(a)(iii) and MCR 7.212(A)(2)(a)(ii) allow the Court of Appeals to extend the time for filing briefs on motion, but do not provide standards for the granting of such a motion. The Work Group recommends that this be changed to allow the granting of a motion to extend time only for good cause shown and then only for the exact time that is required in the specific case, imposing a 14-day maximum in all but the most extraordinary cases.

b. Implementation

(1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.

(2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.

(3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.

(4) **Internal Operating Procedures** Note that this change would obviate the current provisions of the Court's Internal Operating Procedures 7.212(A)(1) and (A)(2) relating to motions to extend the time to file an appellant's and appellee's briefs and would require a change in those Internal Operating Procedures.

c. Delay Reduction Effect The Work Group projects that the implementation of this recommendation will save at least 14 days in the time spent waiting for appellants' briefs and at least 14 days in the time spent waiting for appellee's briefs.

6. *Recommendation 6: Amend MCR 7.212(A)(1)(a)(iii) to reduce the time for filing an appellant's brief to 42 days.*

a. Description Currently, MCR 7.212(A)(1)(a)(iii) gives an appellant 56 days to file appellant's brief on appeal with the Clerk of the Court. The Work Group recommends that this be reduced to 42 days.

b. Implementation

(1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.

- (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect The Work Group projects that the implementation of this recommendation will save at least 14 days in the time spent waiting for appellants' briefs in all cases that presently allow 56 days for filing.
7. *Recommendation 7: Amend MCR 7.210(G) to reduce the time to file the lower court record with the Court of Appeals to 14 days.*
- a. Description Currently, MCR 7.210(G) gives the trial court 21 days to file the lower court record with the Clerk of the Court. The Work Group recommends that this be reduced to 14 days.
  - b. Implementation
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.
    - (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.
    - (3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.
  - c. Delay Reduction Effect The Work Group projects that the implementation of this recommendation will save at least 7 days in the time spent waiting for the lower court record in all cases that presently allow 21 days for filing.
8. *Recommendation 8: Amend MCR 7.212(G) to reduce the time to file any reply brief to 14 days.*
- a. Description Currently, MCR 7.212(G) gives the appellant 21 days to file a reply brief with the Clerk of the Court. The Work Group recommends that this be reduced to 14 days.
  - b. Implementation
    - (1) **Court of Appeals Rules Committee** The proposed change would be submitted to the Court of Appeals Rules Committee for approval at its June 2002 meeting.
    - (2) **Court of Appeals** The proposed change would be submitted to the Court of Appeals for approval at its June 2002 meeting.

(3) **Supreme Court** The proposed change would be submitted to the Supreme Court by June 2002 and would, if approved, be effective September 1, 2003.

- c. **Delay Reduction Effect** This recommendation will have no overall net effect on opinion case processing, because the time for filing a reply brief runs concurrently with the time to file the lower court record. If both times are reduced to 14 days, however, the time for filing the reply brief will not delay the case after receipt of the lower court record.

**F. Conclusion** Chart 15 shows the effect of these reductions.

**Chart 15**

<b>Time In Intake September 30, 2004</b>				
<b>Recommendation</b>	<b>Proposed Reduction</b>		<b>Aggregate Decrease</b>	
	Summary Disp Appeals	All Appeals	Summary Disp Appeals	All Appeals
Recommendation 1	N/A	N/A	N/A	N/A
Recommendation 2	49 Days	10 Days	49 Days	10 Days
Recommendation 3	28 Days	28 Days	77 Days	38 Days
Recommendation 4	28 Days	28 Days	105 Days	66 Days
Recommendation 5	14 Days	14 Days	119 Days	80 Days
Recommendation 6	14 Days	14 Days	133 Days	94 Days
Recommendation 7	7 Days	7 Days	140 Days	101 Days
Recommendation 8	N/A	N/A	N/A	N/A
Totals	140 Days	101 Days	140 Days	101 Days
Current Court Rule Periods:			315 Days	
Proposed Reduction:			101 Days	
Projected Overall Period:			214 Days	
Percentage Decrease:			32%	

The Work Group projects, with these figures in mind, that its recommendations will save, on average, 87 days in Intake. Based on 2001 statistics, this will reduce the wait in Intake from the current level of 263 days to 176 days. This is a reduction of 33%, which rather closely correlates with the above projected percentage decrease.

## **VI. CONCLUSION**

**A. Overall Reductions** As Chart 16 shows, based on 2001 statistics, the cumulative effect of the above actions will be to reduce the wait at the Court of Appeals from the current level of 654 days to 498 days. This is an overall reduction of approximately 23%.

**Chart 16**

Projected Overall Time Saved And Projected Overall Processing Times September 30, 2004				
Major Stage	Current Overall Average	Proposed Reduction	Aggregate Decrease	Projected Overall Average
Judicial Chambers	64 Days	15 Days	15 Days	49 Days
Research	61 Days	--	--	61 Days
Warehouse	266 Days	54 Days	69 Days	212 Days
Intake	263 Days	87 Days	156 Days	176 Days
Totals	654 Days	156 Days	156 Days	498 Days
<p>Current Overall Average: 654 Days  Proposed Overall Reduction: 156 Days  Projected Overall Average: 498 Days  Overall Percentage Decrease: 23%</p>				

## **B. Relationships To The ABA Standards**

1. *The Current ABA Standards* Currently, the American Bar Association standards for appellate courts recommend that such courts dispose of 95% of cases within 12 months of filing. Importantly, the ABA standards do not distinguish, as has this Report, between *opinion* cases and *order* cases; the ABA standards simply relate to *all* cases in the aggregate.

2. *Opinion Cases Versus Order Cases* As noted above, in 2001 the Court disposed of approximately 7600 cases, of which 3100 were by *opinion* and 4500 by *order*. The Work Group has consulted with a statistical expert and has been advised, subject to a number of assumptions and caveats, that if the Court were to bring the *average* time for processing an opinion case down to roughly 300 days, then the Court would, again on average, dispose of 95% of its *opinion* cases well within 18 months, but not within 12 months.

3. *The Effect Of Order Cases* The expert has advised, further, that extrapolating this result to *all* cases involves consideration of the skewing of *order* cases. While the vast majority of such cases are decided fairly promptly, a small percentage take more than a year and a half to decide. With this in mind, and even if the Court takes action with respect to this small percentage of order cases, achieving the ABA Standard of the disposition of 95% of *all* cases within 365 days is, as a practical matter, impossible without further major changes in the court rules.

4. *Recommendation* Therefore, the Work Group recommends, subject to the same assumptions and caveats and assuming the disposition of approximately 7600 cases per year, that the Court adopt a goal of disposing of 95% of *all* its cases within approximately 18 months of filing. While this would not meet the current ABA standard, the Work Group believes it is an achievable, albeit difficult, goal.

**C. Additional Resources In The Research Division** The difficulty, of course, is that the Court's current resources do not permit it to reduce the projected overall average processing time for *opinion* cases from 498 days to 300 days, a reduction of approximately 198 days. Therefore, the Work Group recommends that the Court seek funding in FY 2004 for an additional seven to ten attorneys in the Research Division. Assuming the current level of salary and benefits increased by 3% to account for inflation, this would require an additional appropriation of approximately \$470,000 to \$670,000. Subject to the same assumptions and caveats, and assuming such an appropriation increase effective October 1, 2003, the Work Group projects that by October 1, 2004, the Court would begin to dispose of 95% of *all* cases filed with the Court within 18 months of filing.

# Michigan Court of Appeals Organizational Chart

January, 2002

